

**Before the
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket Nos. 2013-252-C, 2000-265-C, 1999-323-C, and 2003-369-C

Order No. 2013_____

August ____, 2013

In re:

**Joint Application of Birch Communications,
Inc.; Birch Telecom of the South, Inc., dba
Birch Communications; and Lightyear
Network Solutions, LLC for Approval
to Transfer Assets**

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**ORDER APPROVING
TRANSFER OF ASSETS
AND CUSTOMERS**

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the application of Birch Communications, Inc. (“BCI”); Birch Telecom of the South, Inc., doing business as Birch Communications (“Birch Telecom”) (collectively the “Company”); and Lightyear Network Solutions, LLC (“Lightyear”) (BCI, Birch Telecom and Lightyear collectively, the “Joint Applicants”) to transfer Lightyear’s telecommunications assets and South Carolina customer base to the Company pursuant to S.C. Code Ann. §§ 58-9-280, 58-9-300 and 58-9-310. The Joint Applicants requested that the Commission approve this Application as soon as possible, so that they can expeditiously close the transaction and meet critical business objectives. The Commission is of the opinion, and so finds, that the Application should be granted on the basis of the following findings and conclusions:

FINDINGS OF FACT

1. Lightyear was authorized by the Commission to provide interexchange telecommunications services in South Carolina in Order No. 2004-550, Docket No. 2003-369-C.

2. BCI, formerly known as Access Integrated Networks, Inc., was granted authority to provide local and long distance telecommunications services in South Carolina by Order No. 1999-801 issued November 15, 1999, in Docket No. 1999-323-C. On December 18, 2008, the Commission issued Order No. 2008-824 approving Access Integrated Networks, Inc.'s, doing business as Birch Communications, request to change the name to "Birch Communications, Inc." Birch Telecom is authorized by the Commission to provide local exchange and interexchange telecommunications services in South Carolina by Order No. 2000-792 issued September 25, 2000 in Docket No. 2000-265-C. Birch Telecom is a wholly owned subsidiary of BCI.

3. The Company published notice of this matter in *The Greenville News*, *The State*, and *The Post and Courier* newspapers in conformity with the Commission's requirements providing notice and opportunity to any interested third parties to intervene in this matter. The Joint Applicants then moved for expedited review of the Joint Application and filed the verified testimony of Christopher J. Bunce, Senior Vice President and General Counsel for BCI and Birch Telecom.

4. Mr. Bunce's testimony and the Joint Application described the proposed transaction. BCI entered into an Asset Purchase Agreement ("Agreement") to purchase Lightyear's assets and customer base.

5. The assets to be purchased include customer accounts, accounts receivable, customer agreements and contracts, vendor agreements and contracts, and intellectual property.

BCI will not assume any of Lightyear's pre-closing liabilities or obligations. The proposed transfer will result in Birch Telecom becoming the service provider for Lightyear's current South Carolina customers unless the customer selects another carrier. The rates, terms and conditions of the services received by these customers will not change for the immediate future. Following approval, Birch states that it will file any necessary tariff revisions to incorporate Lightyear's current services and rates into its existing tariffs on file with the Commission.

6. The Company is expected to purchase substantially all of Lightyear's assets and assume Lightyear's telecommunications operations in South Carolina. Upon completion of the transaction, expected on or around September 15, 2013, and the migration of customers to Birch, Lightyear will no longer offer telecommunications services in South Carolina. The Joint Applicants have requested that Lightyear's certificate of public convenience and necessity and any associated tariffs be cancelled effective December 31, 2013, to give adequate time for the migration of customers and for Lightyear to satisfy any remaining regulatory obligations for its South Carolina operations. These obligations include, but are not limited to, Lightyear's gross receipts obligations and any assessments for the South Carolina Universal Service Fund. The Company will file notification with the Commission within thirty days of completion of the asset transfer and customer migration. Lightyear's certification and any associated tariffs will be cancelled effective December 31, 2013.

7. The Joint Applicants propose to provide a joint notice of the transfer to Lightyear customers at least thirty days prior to the transfer in accordance with the customer notice rules adopted by the Commission and the Federal Communications Commission. The Commission

finds that the Joint Applicants' proposed plan to provide customer notice complies with the requirements of South Carolina law.

8. The Commission finds based upon the evidence in the record that it is in the public interest of the citizens of South Carolina to approve the transaction between the Company and Lightyear as both BCI and Birch Telecom are established telecommunications service providers in South Carolina with significant industry knowledge, technical expertise, and financial strength. Birch Telecom will continue to offer the same high quality services to Lightyear's customers in terms of the services that those customers receive.

CONCLUSIONS OF LAW

1. Based on our finding that no parties intervened in this matter and since this transaction will be seamless for Lightyear customers, we conclude that a formal hearing in this matter is not required.

2. We conclude that it is in the best interest of the public to approve the contemplated transfer of assets and customers.

3. We conclude that Lightyear must satisfy any remaining regulatory obligations for its South Carolina operations including, but not limited to, its gross receipts obligations and any assessments for the South Carolina Universal Service Fund no later than December 31, 2013. We also conclude that Lightyear's certificate of public convenience and necessity and any associated tariffs will be cancelled effective December 31, 2013. The Company must file notification with the Commission within thirty days of completion of the asset transfer and customer migration.

4. S.C. Code Ann. Section 58-3-230 governs the unauthorized change of a utility service provider. We conclude that the proposed customer notice and the plan for providing notice will satisfy S.C. Code Ann Section 58-3-230.

IT IS THEREFORE ORDERED

1. That the Joint Application is granted, and no formal hearing is required.
2. The Joint Application for authority to transfer the assets and customers of Lightyear to the Company is approved.
3. Specific to the facts of this Order and to the extent that the Commission has jurisdiction, we hold that the proposed customer notice will satisfy the South Carolina anti-slamming provisions.
4. That Lightyear satisfy any remaining regulatory obligations for its South Carolina operations no later than December 31, 2013.
5. Lightyear's certificate of public convenience and necessity and associated tariffs are cancelled effective December 31, 2013.
6. That the Company notify the Commission within thirty days of completion of the asset transfer and customer migration.
7. This order shall remain in full force and effect until further order of the Commission.

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BY ORDER OF THE COMMISSION:

G. O'Neal Hamilton, Chairman

ATTEST:

Nikiya "Nikki" Hall, Vice-Chairman
(SEAL)